IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4300 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAISHREEBEN JITESHKUMAR PANWALA W/O.DETENU

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

Heard learned advocate Mr. N. M. Kapadia on behalf of the petitioner and learned A.G.P. Mr. A. J. Desai for the respondents Nos. 1,2 and 3.

1. The petition has been filed by the wife of the detenu - Jiteshkumar @ Munna Rameshchandra Panwala to challenge the detention order dated 12.5.1999 passed by the respondent No. 1 - Commissioner of Police, Surat City against the detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at Annexure - "A" interalia indicate that prohibition case vide CR. No. 52/99 was registered against the detenu at Prohibition Station (West) Surat on 12.1.1999. That in the said case, Indian Made Foreign Liquor has been seized from the possession of the petitioner. The matter is pending for trial and the chargesheet has been filed in the same.

The ground of detention further indicate that two witnesses on assurance of their anonymity have given statements dated 28.4.1998 and 1.5.1999 respectively. relating to antisocial activities of the detenu indicating the alleged incident dated 13.2.1999 and 2.4.1999 respectively.

3. That on the basis of above stated material, the respondent No. 1 as Detaining Authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order is bad in law on account of non application of mind in as much as, the Detaining Authority has failed to consider the aspect of less drastic remedy of opposing and/or claiming cancellation of bail available under Section 437(5) of the Cr.P.C.

5. It is noteworthy that in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT reported in 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr. P. C. to claim cancellation of bail amounts to non

application of mind which vitiates the subjective satisfaction rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No. 1056 of 1999 decided on 15.9.1999 by this Court (Coram : C. K. Thakkar & A. L. Dave, JJ.)

6. In the instant case, the grounds of detention disclosed the fact that the detenu was released on bail in Criminal Case registered against him on 12.1.1999. That the grounds of detention does not disclose any fact from which a reasonable inference can be drawn that the Detaining Authority has considered the claim of cancellation of bail granted to the detenu in a pending case registered against him. That the said non application of mind having vitiate the subjective satisfaction has rendered the impugned order invalid and it can not be sustained.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide, the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 12.5.1999 passed by the respondent No. 1 - Commissioner of Police, Surat City against the petitioner-detenu is hereby quashed and set aside. The petitioner - detenu Jiteshkumar @ Munna Rameshchandra Panwala is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

Date : 25.01.2000. (A. K. Trivedi, J.)

PALLAV.